

The Pacific and the Law of the Sea

by

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Good afternoon, ladies and gentlemen. It is a pleasure to have the opportunity to speak with you this afternoon. I recognize that you have reached the latter part of a long and stimulating day of speakers. I am reminded of a statement of Adlai Stevenson under similar circumstances: "My job this afternoon is to speak to you, and yours is to listen to me. I hope I finish my job before you finish yours."

I would like to speak to you briefly about the relation of the Pacific Island nations to the law of the sea. Under international law, each of these new nations, some of them having no more than 7,000 citizens, as Mr. Bodde has indicated, have all of the rights, privileges, and duties of a sovereign nation. They are free to recognize other states or to withhold recognition. Each has a vote in the United Nations, the same as the United States. They can make treaties and abrogate them. They can collect taxes and tariffs, and they can regulate their trade. They can admit industry, and they can nationalize it if that is their wish. They can establish armed forces and navies. They can declare war or they can decline to make war.

Today these islands, which once were isolated by long distances over vast oceanic wastelands, are now bound tightly together by the same oceans. The oceans give them similar advantages and similar problems, and from these grow similar attitudes and ways of dealing with the rest of the world.

Because of the rapid growth of customary international law of the sea,

each of these nations has a twelve-mile territorial sea and a 200-mile exclusive economic zone over which they exercise their sovereign jurisdiction.

The problem: while the United Nations Law of the Sea Conference has been deliberating since December 1973 on a comprehensive rule of law for the oceans, the present and foreseeable state of that law is one of rapid change, ambiguity, and a degree of unpredictability. Thus, there is no binding and authoritative agreement on what the exclusive economic zone is and what it is not. No one can define what precise rights and jurisdiction attach to it. Does it confer control over transit? Under what conditions are entry and overflight limited? Is it subject to advance permission, in much the same way as the ICAO (International Civil Aviation Organization) Convention regulates flight over the territorial sea? Or, as some say, is it really more like the high seas?

The eminent scholar of international law, Dr. Choon-ho Park, tells a story about two truck drivers on a bridge over the Yalu River, one Korean and one Chinese. The bridge is only one lane wide, and one of the drivers will clearly have to back up. They are at an impasse. The Korean takes out a copy of the Sunday edition of the New York Times and carefully reads it from cover to cover. At length he is finished. He puts it down. The Chinese driver asks, "May I borrow it?"

This is illustrative of the current state of the law of the sea negotiations. Delay is a very human negotiating tactic. In a bureaucracy it is usually far easier to delay or to say "no" than to assent to basic change, and basic change is what is now being proposed--and accomplished--in the law of the sea.

From 1608 and Hugo Grotius' Mare Liberum to President Truman's continental shelf proclamation of 1945, the law of the sea has changed very slowly. One might venture to say that there has been more change since 1945 than in the

previous three centuries--change driven by advancing technology. Here we have a classic case of cultural lag, in which mankind's rules for regulation of ocean activities have consistently lagged behind the need. Let us be clear: technology is not at fault. The problem is in the ability of human institutions to derive viable rules and policies for healthy implementation of that technology.

Recently the headlines have been full of the accident at Three Mile Island, and this case is illustrative. Here there was no basic technological fault. The technology works. The fault lay in the human organizations which failed to control adequately that technological power, and which, once an accident had occurred, were unequal to the task of adequate timely response. The problems were in policy, in law, in bureaucracy.

We face many repetitions in the Pacific as we test the interface of ocean development and oceanic law, politics, economics, technology, and resource management.

The Pacific, which we have always thought of as a vast place, is now walled in by a continuous line of 200-mile economic zones--zones in which the legal and practical implications are still unclear. Indeed, if the conferees at the United Nations Conference on the Law of the Sea should fail to achieve a comprehensive agreement, these zones--as well as the international straits of the world on which so much of our energy supply depends--may well be the subject of many unilateral claims. We are approaching a period in which there is a great danger of rapid and unpredictable change in the law of the sea.

Unpredictability defeats efforts at ocean development. In every area, the cultural lag reappears: In fishing, the techniques are well known, but full usage of the resource is limited by lack of agreement on regional fishing

regimes. In deepsea mining, the industry tells us that the technology is ready, but that investment and implementation must await clarification of international agreements and legal issues. We have already alluded to the uncertainties of access and passage through the economic zones, which may affect surface and air transportation. In the area of energy, the tropics have special opportunities in a variety of new technologies such as ocean thermal energy conversion, floating platforms for coal or nuclear power plants, and other uses of solar energy, as for food production; but in many cases the rules for regulation of these new techniques will take a long time to derive. Consider, for example, the difference between our current fishing tradition, based on free access to an open hunting territory, and the requirements of open ocean mariculture. Who has the right to harvest "farmed" fish?

In the final analysis, development--whether on land or at sea--comes down to specifics. Specific solutions must be found for specific problems, and generalizations will not serve to solve the intricacies of cultural lag. The issues are often complicated by the logical precedent set for one case which fails to ameliorate a following case. More likely than not, complexity is going to be our lot in this field. In solving problems of development, there are always trade-offs, and agreement requires consensus and compromise.

How is such consensus to be achieved?

In the case of oceanic societies, there is a built-in corrective device which uses the great adaptability of oceanic commerce and industry as its operant conditioner. To use an analogy from John Craven, Director, Law of the Sea Institute, early sea traders making their first commercial contacts with unknown societies no doubt left their goods on the beach. If the response was friendly, and if the goods were rewarded with suitable exchanges, a trading pattern was established. But if the goods were taken without reward, and the

sailors eaten to boot, that society was thereafter avoided. The first oceanic societies developed, if they were responsive, into great trading societies such as Sidon and Tyre. The others were forgotten.

Today we no longer leave goods on the beach. We have exchanges of views, trade conferences, visits of merchants across oceans, etc. To solve the institutional problems, we try methods such as the United Nations Conference on the Law of the Sea. But here, as in the past, if the goods are taken without suitable exchange, oceanic societies will adapt as they have always adapted.

The Law of the Sea Institute is dedicated to the principle that the greatest potential for present and future oceanic societies can be achieved by encouragement of this adaptation process. To that end, the Institute serves as a neutral and objective, interdisciplinary and international forum in which ideas and information can be exchanged on matters concerning the law, the politics, the economics, and the technology of the sea. Further, we have a faith that this sort of consensus building, based on the free exchange of ideas, works.